

According to K.S.A. 44-510h, the employer is liable for medical treatment reasonably necessary to cure and relieve the employee from the effects of the injury. The effects of the July 22, 2003 injury were a painful, stiff left knee, and

medical opinion says that knee replacement is necessary to relieve those effects. Knee replacement will also address an underlying arthritic condition, but that does not disqualify the procedure as reasonable and necessary treatment of the pain and stiffness caused by [the] work incident, as well.¹

Respondent and its insurance carrier contend Judge Hursh erred. They argue claimant failed to prove the requested knee replacement surgery is related to his alleged July 22, 2003, accident at work. Consequently, respondent and its insurance carrier request the Board to reverse the March 3, 2005, Order and to deny claimant's application for the requested medical treatment.

Conversely, claimant contends the Board does not have jurisdiction to review this preliminary hearing Order. In the alternative, claimant asks the Board to affirm the March 3, 2005, Order.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction to review a preliminary hearing order and finding that claimant's present injury and need for a knee replacement is related to an alleged accident at work?
2. If so, did claimant prove the knee replacement surgery that he now requests is related to his alleged July 22, 2003, accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes the preliminary hearing Order should be affirmed.

The issue of whether a worker's injury arose out of and in the course of employment is specifically designated as an issue that is subject to Board review from a preliminary hearing order. K.S.A. 44-534a(a)(2) addresses the Board's jurisdiction over preliminary hearing findings and provides, in part:

A finding with regard to a disputed issue of whether the employee suffered an accidental injury, **whether the injury arose out of and in the course of the employee's employment**, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. (Emphasis added.)

¹ ALJ Order (Mar. 3, 2005) at 2.

Accordingly, the Board has jurisdiction at this juncture of the claim to determine whether the evidence establishes that claimant's present left knee injury and need for joint replacement are due to an accident that occurred at work.

Claimant injured his left knee on July 22, 2003, while working for respondent as a carpenter. At the time of the accident, claimant was working on a bridge when he felt his left knee "roll."²

I was out on the girder, I was squatted down my feet together and my butt sitting on my heels, because the girders weren't but about 10, 12 inches wide, and I was welding straps in and I backed up just the same way. I just scooted myself back and welded in another strap and I felt my knee roll, but I didn't think anything about it. It didn't hurt. When I went to stand up my knee wouldn't straighten out and I couldn't get my leg to straighten out. I only had so much of a range of motion with it and that was it.³

Following that incident, and despite three knee surgeries, claimant has experienced problems squatting, kneeling, climbing, and straightening his left knee. Claimant's knee surgeon, Dr. Roger W. Hood, now recommends a total left knee replacement.

But this is not the first time claimant has experienced left knee problems. Claimant initially injured his left knee in 1985 and underwent surgery. Nevertheless, claimant recovered from that injury and did not seek nor require any medical treatment or medical restrictions due to that injury, as far as he can recall, after early 1986. According to claimant, he had full use and function of his left knee before the July 22, 2003, incident at work. Claimant testified about his recovering from his 1985 left knee injury, as follows:

I did great. I did whatever I wanted. I was working out on the high rises, I climbed the forms or columns, you know, whatever I wanted without any problems. It didn't restrict me on anything.⁴

Despite the medical treatment claimant has received from Dr. Hood following the July 2003 injury, the doctor advised respondent's risk management company that claimant sustained a 10 percent functional impairment to his left lower extremity due to that injury. On the other hand, the doctor feels most of claimant's present problems stem from the

² P.H. Trans. at 4.

³ *Id.* at 12.

⁴ *Id.* at 11.

1985 injury, as the doctor wrote the risk management company in September 2003, as follows:

At your request, I saw Tom today for his left knee injury. He's a carpenter for Clarkston [sic] Construction. This knee history goes back to 1985, when he had a torn cartilage in the lateral compartment that was removed. He said he did pretty well there after [sic], up until the injury in July when he was sort of twisting with his knee bent. On x-ray he has horrible degenerative arthritis in this knee with huge spurs both medial and laterally, in the flexed knee position he's basically bone on bone in the lateral compartment. It's continued to bother him to a certain extent since that time and it's episodic. Except for avoiding kneeling, he has been able to work and Clarkston [sic] has been able to live with that. I reviewed his MRI and his plain x-rays. I think he would probably benefit from an arthrotomy to try and clean out as much of this stuff as possible. I don't think doing it through the scope would be effective. I realize there would be a longer down time [sic], but he's got spurs that are just huge and I think [t]he only way to deal with that is with an open arthrotomy. I asked him to consider that. He's probably going to need a total knee within the next five to ten years, but at his age, it would be nice to try and postpone that as long as possible. It's obvious that his problems from 1985 are ninety-nine percent of the reason he's having his troubles now. I don't think he would have had the problem but for the 1985 knee injury. . . .⁵

An injury is compensable under the Workers Compensation Act even when an accident at work only serves to aggravate a preexisting condition.⁶ The test is not whether the accident caused a condition but, instead, whether the accident aggravated or accelerated a preexisting condition.⁷

Considering the entire record compiled to date, the Board affirms the Judge's finding that it is more probably true than not that claimant's present need for left knee replacement surgery was precipitated by his July 22, 2003, accident at work. Accordingly, the March 3, 2005, preliminary hearing Order should be affirmed.

The Board adopts the findings and conclusions set forth in the March 3, 2005, Order to the extent they are not inconsistent with the above.

⁵ *Id.*, Resp. Ex. A.

⁶ *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

⁷ *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁸

WHEREFORE, the Board affirms the March 3, 2005, preliminary hearing Order entered by Judge Hursh.

IT IS SO ORDERED.

Dated this ____ day of July, 2005.

BOARD MEMBER

c: Thomas Stein, Attorney for Claimant
Andrew S. Mendelson, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁸ K.S.A. 44-534a(a)(2).